

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ANSAR EL MUHAMMAD a/k/a  
TONY BENNETT,

No. C 08-4069 MHP (pr)

**ORDER OF DISMISSAL**

Petitioner,

v.

SHERIFF AHERN; et al.,

Respondents.

Ansar El Muhammad a/k/a Tony Bennett commenced this action by filing a petition for writ of habeas corpus in which he complained about the conditions of confinement at a county jail, i.e., that his religious freedom rights were being denied. The petition goes entirely to the conditions of his confinement, and success in this action would not affect the duration of his confinement.

Where, as here, a successful challenge to a prison or jail condition will not necessarily shorten the inmate's sentence or time in custody, a civil rights action under 42 U.S.C. § 1983 is proper and habeas jurisdiction is absent. See Ramirez v. Galaza, 334 F.3d 850, 859 (9th Cir. 2003). In addition, the preferred practice in the Ninth Circuit has been that challenges to conditions of confinement be brought in a civil rights complaint. See Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991) (civil rights action proper method of challenging conditions of confinement); Crawford v. Bell, 599 F.2d 890, 891-92 & n.1 (9th Cir. 1979) (affirming dismissal of habeas petition because challenges to terms and conditions of confinement must be brought as civil rights complaint).

1 Although a district court may construe a habeas petition by a prison or jail inmate  
2 attacking the conditions of his confinement as pleading civil rights claims under 42 U.S.C. §  
3 1983, Wilwording v. Swenson, 404 U.S. 249, 251 (1971), the court declines to do so here.  
4 The difficulty with construing a habeas petition as a civil rights complaint is that the two  
5 forms used by most inmates request different information and much of the information  
6 necessary for a civil rights complaint is not included in the habeas petition filed here.  
7 Examples of the potential problems created by using the habeas petition form rather than the  
8 civil rights complaint form include the potential omission of intended defendants, potential  
9 failure to link each defendant to the claims, and potential absence of an adequate prayer for  
10 relief. Additionally, there is doubt whether the inmate is willing to pay the \$350.00 civil  
11 action filing fee rather than the \$5.00 habeas filing fee to pursue his claims. The habeas  
12 versus civil rights distinction is not just a matter of using different pleading forms. A habeas  
13 action differs in many ways from a civil rights action: (1) a habeas petitioner has no right to  
14 a jury trial on his claims, (2) the court may be able to make credibility determinations based  
15 on the written submissions of the parties in a habeas action, (3) state court (rather than  
16 administrative) remedies must be exhausted for the claims in a habeas action, (4) the proper  
17 respondent in a habeas action is the warden in charge of the prison (or the sheriff in charge of  
18 the jail), but he or she might not be able to provide the desired relief when the inmate is  
19 complaining about a condition of confinement, and (5) damages cannot be awarded in a  
20 habeas action. While an inmate may think he has found a loophole that allows him to save  
21 \$345.00 – by filing a habeas petition with a \$5.00 fee rather than the usual \$350.00 fee for a  
22 civil action – the loophole proves unhelpful because he ultimately cannot proceed in habeas  
23 and will be charged the \$350.00 filing fee to challenge conditions of confinement. It is not in  
24 the interest of judicial economy to allow inmates to file civil rights actions on habeas forms  
25 because virtually every such case, including this one, will be defective at the outset and  
26 require additional court resources to deal with the problems created by the different filing  
27 fees and the absence of information on the habeas form.

28 Lastly, the court notes that this is at least the second time the court has explained this

1 very point to Muhammad, i.e., that conditions of confinement claims need to be asserted in a  
2 civil rights complaint rather than a habeas petition. See Order of Dismissal in Muhammad v.  
3 Henery, No. C 06-933 MHP. Repeating this error wastes judicial resources and may result in  
4 the dismissal of any further habeas petitions that challenge conditions of confinement as  
5 malicious for purposes of 28 U.S.C. § 1915(g).

6 For the foregoing reasons, this action for a writ of habeas corpus is DISMISSED  
7 without prejudice to petitioner filing a civil rights action under 42 U.S.C. § 1983, preferably  
8 using the court's civil rights complaint form, after he has exhausted the jail's administrative  
9 remedies. See 42 U.S.C. § 1997e(a).

10 The in forma pauperis application is DENIED.

11 The clerk shall close the file.

12 IT IS SO ORDERED.

13 DATED: November 14, 2008

  
Marilyn Hall Patel  
United States District Judge